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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

16 Eat Strong, LLC, a Utah company,  
17 Plaintiff,  
18 v.  
19 Palomino Trade, LLC, a California  
20 company,  
21 Defendant.

Case No. 5:23-cv-2041

**COMPLAINT FOR DAMAGES**

1. Trademark Infringement  
*15 U.S.C. § 1114*
2. False Designation of Origin  
*15 U.S.C. § 1125(a)*
3. Unlawful, Unfair, Fraudulent  
Business Practices California Bus.  
Code § 17200 et seq.
4. Unfair Competition Common Law

**DEMAND FOR JURY TRIAL**

1 Plaintiff Eat Strong, LLC, through its counsel, hereby complains of Defendant  
2 Palomino Trade, LLC and for a cause of actions states as follows:

3

4 **PARTIES**

5 1. Plaintiff Eat Strong, LLC is a Utah limited liability company having its  
6 principle place of business at 12259 S 450 E, Suite B, Draper, Utah 84020.

7 2. Palomino Trade is a California limited liability company having its  
8 principle place of business at 540 Hidden Valley Parkway, Suite 101, Corona,  
9 California 92879.

10

11 **JURISDICTION AND VENUE**

12 3. This action arises under the trademark and unfair competition laws of the  
13 United States. 15 U.S.C. §1051 et seq.

14 4. This Court has original jurisdiction over the subject matter of this action  
15 pursuant to 15 U.S.C. §1121(a) and 28 U.S.C. §§1331 (federal question), 1338(a) (any  
16 Act of Congress relating to patents or trademarks), and 1338(b) (any action asserting  
17 claim of unfair competition joined with a substantial and related claim under the  
18 trademark law) for the claims arising out of the violations of Sections 32(1)(a) and  
19 43(a) and (c) of the Lanham Act.

20 5. This Court has supplemental jurisdiction over the pendent state and  
21 common law claims arising from the same nucleus of operative facts pursuant to 28  
22 U.S.C. §1367(a).

23 6. This Court has personal jurisdiction over the defendant because its  
24 principal place of business is located within this District.

25 7. Venue is proper in this District under 28 U.S.C. §1391(b)(2) because a  
26 substantial part of the events giving rise to the claims occurred in this District.

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## **GENERAL ALLEGATION**

### Plaintiff's Trademarks

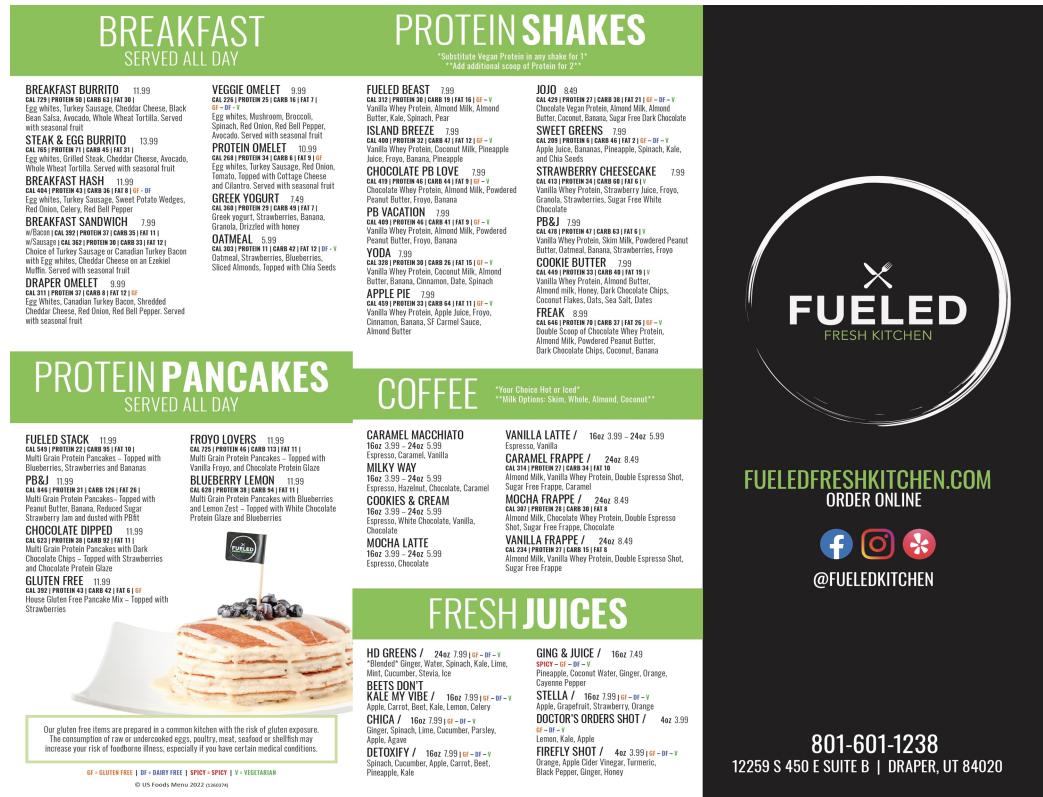
8. Plaintiff Eat Strong, LLC owns and operates a restaurant called Fueled Fresh Kitchen, located at 12259 S 450 E, Suite B, Draper, Utah 84020 (hereinafter the "Fueled Restaurant").

9. Although there is currently just one Fueled Restaurant, Plaintiff has plans to expand nationwide by selling franchises.

10. The Fueled Restaurant has a reputation for high quality restaurant services by offering excellent food, unsurpassed customer service, and affordable prices in a family-friendly environment.

11. To protect its brand, Eat Strong obtained U.S. Federal Trademark Registration No. 5789701, filed on August 28, 2018, for the mark FUELED FRESH KITCHEN in International Class 043 for restaurant services (the "Trademark").

12. Plaintiff advertises nationwide for its Fueled Restaurant services using the Trademark. Examples of Plaintiff's use of the Trademark include the following:





13. Plaintiff also provides a meal preparation service for ready-made-meals  
 14. using a meal prep order form bearing the FUELED FRESH KITCHEN logo. See  
 15. Exhibit A.

16. Plaintiff has been using the Trademark to provide restaurant services in  
 17. the United States since at least as early as November 27, 2018.

18. 15. The Trademark mark serves as a source-identifier for genuine Fueled  
 19. Restaurant services and is used in or on all restaurant services offered by Plaintiff in  
 20. the United States.

21. 16. Plaintiff Eat Strong LLC has invested significant time, energy, and  
 22. money advertising, promoting, and selling restaurant services featuring the  
 23. Trademark, as well as ensuring the high quality of the services it provides which bear  
 24. the Trademark. These efforts have resulted in widespread and favorable public  
 25. acceptance and recognition of the Trademark.

26. Defendant's Infringing Activity

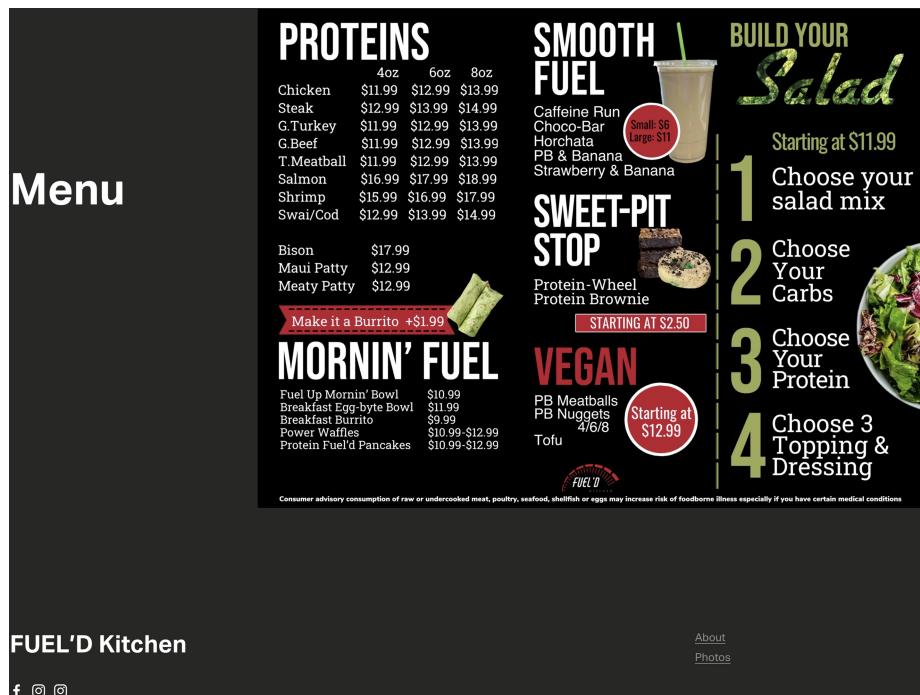
27. 17. Defendant Palomino Trade, LLC has promoted, offered for sale, and/or  
 28. sold restaurant services under the mark FUEL'D KITCHEN (the "Infringing Mark").

1        18. Recently, Plaintiff discovered that Defendant was marketing, offering  
 2 for sale and selling restaurant services featuring the Infringing Mark as well as meal  
 3 prep services (collectively, “the Infringing Services”). The Infringing Services were  
 4 not approved for sale by Plaintiff.

5        19. Defendant's FUEL'D KITCHEN mark is confusingly similar to  
 6 Plaintiff's FUELED FRESH KITCHEN mark.

7        20. Defendant is using the Infringing Mark without license, authority, or  
 8 other permission from Eat Strong, LLC.

9        21. The Infringing Services were promoted by Defendant and sold under the  
 10 Infringing Mark. Examples of the Infringing Services follow:



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 Photos About Contact f i o

MEAL PREP.  
Healthy. Simple.

Fresh.





FUEL'D Kitchen

5.0 ★★★★★ (5)  
Health food restaurant

Overview Reviews About

Directions Save Nearby Send to phone Share

RESERVE A TABLE ORDER ONLINE

✓ Dine-in · ✓ Curbside pickup · ✓ No-contact delivery >

540 Hidden Valley Pkwy STE 101, Corona, CA 92879  
Located in: Hidden Valley Plaza

Closes soon · 5 PM · Opens 8 AM Thu  
Updated by others 1 week ago

Menu [fueldkitchencorona.square.site](http://fueldkitchencorona.square.site)  
[fueldkitchen.com](http://fueldkitchen.com)  
(951) 433-7576  
VCXV+9F Corona, California  
Send to your phone  
Add a label

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COMPLAINT FOR DAMAGES

1       22. A predominant feature of both the genuine and the infringing restaurant  
 2 menus and advertising are the words "FUELED" and "FUEL'D" followed by the word  
 3 "KITCHEN".

4       23. Further, on June 28, 2023, Plaintiff sent a cease-and-desist letter to Fuel'd  
 5 Kitchen at 540 Hidden Valley Pkwy, Unit 101, Corona, CA 92879 regarding its sale  
 6 of restaurant services bearing the Infringing Mark.

7       24. Defendant responded to the letter by claiming it did not infringe  
 8 Plaintiff's rights and has continued to market and sell the Infringing Services, in  
 9 purposeful disregard of Plaintiff's rights.

10       25. Defendant Palomino Trade sold and continues to sell the Infringing  
 11 Services despite having actual and specific knowledge of Plaintiff's rights in the  
 12 FUELED FRESH KITCHEN mark and of Eat Strong's objection to Palomino Trade's  
 13 sale of products bearing unauthorized copies of the Infringing Mark.

14       26. Palomino Trade's conduct is willful, intentional, and represents a  
 15 conscious disregard for Plaintiff's rights in the FUELED FRESH KITCHEN mark.  
 16 Further, the fact that Palomino Trade continued its unlawful conduct by selling the  
 17 Infringing Services even after receiving Eat Strong's cease-and-desist letters  
 18 demonstrates Palomino Trade's intent to continue selling Infringing Services without  
 19 regard for Eat Strong's intellectual property rights.

20       27. Defendant's conduct is likely to cause and, upon information and belief,  
 21 has caused consumers to believe mistakenly that the Infringing Services are either  
 22 affiliated with, endorsed by, authorized by, or somehow connected to Plaintiff, or that  
 23 the Infringing Services sold and promoted by Palomino Trade are genuine Eat Strong  
 24 services.

25       28. The activities complained of herein have and continue to irreparably  
 26 harm Plaintiff and dilute the distinctive quality of the FUELED FRESH KITCHEN  
 27 mark.

## **FIRST CAUSE OF ACTION**

## *Trademark Infringement – 15 U.S.C. § 1114*

3 29. Plaintiff incorporates the allegations in paragraphs 1 through 28 as  
4 though fully set forth herein.

5       30. Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a), prohibits  
6 any person from using in commerce, without the consent of the registrant, any  
7 trademark or any reproduction, counterfeit, copy, or colorable imitation thereof in  
8 connection with the marketing, advertising, distribution, or sale of goods or services  
9 which is likely to result in confusion, mistake, or deception.

10 31. The FUELED FRESH KITCHEN mark is federally registered.

11       32. Defendant has used a confusingly similar variation of the FUELED  
12 FRESH KITCHEN mark in connection with the Infringing Services without Plaintiff's  
13 consent or authorization. Defendant's use, including the sale or offer for sale of the  
14 Infringing Services in commerce, is likely to cause confusion and mistake in the mind  
15 of the public, leading the public to believe that Defendant's products emanate or  
16 originate from Plaintiff, or that Plaintiff has approved, sponsored, or otherwise  
17 associated itself with Defendant or its Infringing Services.

18        33. Through the unauthorized use of the Infringing Mark, Defendant is  
19 unfairly benefiting from and misappropriating Plaintiff's goodwill and reputation.  
20 This has resulted in substantial and irreparable injury to the public and to Plaintiff.

21       34. Through Plaintiff's cease and desist letter with Defendant, Defendant has  
22 actual and direct knowledge of Plaintiff's prior use and ownership of the FUELED  
23 FRESH KITCHEN mark. Defendant's conduct is therefore willful and reflects  
24 Defendant's intent to exploit the goodwill associated with the FUELED FRESH  
25 KITCHEN mark.

26        35. Defendant's acts constitute trademark infringement in violation of  
27 Section 32 of the Lanham Act, 15 U.S.C. § 1114.

36. Defendant's acts have caused, and will continue to cause, irreparable  
injury to Plaintiff, and Plaintiff has no adequate remedy at law and is thus damaged  
in an amount not yet determined.

## **SECOND CAUSE OF ACTION**

*False Designation of Origin – 15 U.S.C. § 1125(a)*

37. Plaintiff incorporates the allegations in paragraphs 1 through 36 as  
3 though fully set forth herein.

9       38. Defendant's unauthorized use in commerce of confusingly similar  
10 variation of the FUELED FRESH KITCHEN mark in connection with the  
11 distribution, advertising, promotion, offering for sale, and/or sale of the Infringing  
12 Services constitutes use of a symbol or device that is likely to cause confusion,  
13 mistake, or deception as to the affiliation or connection of Defendant with Plaintiff  
14 and as to the origin, sponsorship, association, or approval of Defendant's Infringing  
15 Services in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

16        39. Defendant's actions as alleged herein, including but not limited to their  
17 unauthorized use in commerce of the Infringing Mark, constitutes use of a false  
18 designation of origin and misleading description and representation of fact that is  
19 likely to cause confusion, mistake, or deception as to the affiliation or connection of  
20 Defendant with Plaintiff and as to the origin, sponsorship, association, or approval of  
21 Defendant's Infringing Services in violation of Section 43(a) of the Lanham Act, 15  
22 U.S.C. § 1125(a).

23        40. Through Plaintiff's cease and desist letter and correspondence with  
24 Defendant, Defendant has actual and direct knowledge of Plaintiff's prior use and  
25 ownership of the FUELED FRESH KITCHEN mark. Defendant's conduct is therefore  
26 willful and reflects Defendant's intent to exploit the goodwill associated with the  
27 FUELED FRESH KITCHEN mark.

1       41. In conspiring to and actually committing these acts, Defendant acted  
2 willfully with fraud, malice, and/or a knowing and reckless indifference toward, and  
3 a disrespect of, the rights of others, and Defendant are liable to Plaintiff for punitive  
4 and exemplary damages

5       42. Defendant's wrongful acts will continue unless enjoined by this Court.

6       43. Defendant's acts have caused, and will continue to cause, irreparable  
7 injury to Plaintiff. Plaintiff has no adequate remedy at law and is thus damaged in an  
8 amount not yet determined.

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10       **THIRD CAUSE OF ACTION**

11       *Unlawful, Unfair, Fraudulent Business Practices –*

12       *California Business & Professions Code § 17200 et seq.*

13       44. Plaintiff incorporates the allegations in paragraphs 1 through 43 as  
14 though fully set forth herein.

15       45. Defendant is engaged in trade or commerce in California.

16       46. Plaintiff had a reasonable expectation that Defendant would not infringe  
17 on its intellectual property.

18       47. By using the Infringing Mark as part of their trade name, storefront, and  
19 business name on the Internet and marketing, advertising, promoting, selling,  
20 transporting, distributing, shipping and/or otherwise dealing in products and services  
21 bearing the Infringing Mark, Defendant has engaged in unfair competition including  
22 unlawful, unfair, and fraudulent business practices in violation of the California  
23 Business and Professions Code § 17200 et seq.

24       48. Plaintiff is informed and believes, and on that basis alleges, that  
25 Defendant's unauthorized use of the Infringing Mark and Defendant's marketing,  
26 advertising, promoting, selling, transporting, distributing, shipping and/or otherwise  
27 dealing in products and services bearing the Infringing Mark is in violation and  
28 derogation of Plaintiff's rights and is likely to cause confusion, mistake, and deception

1 among consumers and the public as to the source, origin, sponsorship, or quality of  
 2 the goods and services of Defendant, thereby causing loss, damage and injury to  
 3 Plaintiff and to the purchasing public. Defendant's conduct was intended to cause  
 4 such loss, damage and injury.

5       49. Plaintiff is informed and believes, and on that basis alleges, that  
 6 Defendant knew or by the exercise of reasonable care should have known that its  
 7 unauthorized use of the Infringing Mark and Defendant's marketing, advertising,  
 8 promoting, selling, transporting, distributing, shipping and/or otherwise dealing in  
 9 products and services bearing the Infringing Mark would cause confusion mistake or  
 10 deception among purchasers, users and the public.

11       50. Plaintiff is informed and believes, and on that basis alleges, that by  
 12 Defendant's unauthorized use of the Infringing Mark and Defendant's marketing,  
 13 advertising, promoting, selling, transporting, distributing, shipping and/or otherwise  
 14 dealing in products and services bearing the Infringing Mark, Defendant intended to,  
 15 did, and will continue to induce customers to purchase counterfeit products and  
 16 services by trading off the extensive goodwill built up by Plaintiff in the FUELED  
 17 FRESH KITCHEN mark.

18       51. Plaintiff is informed and believes, and on that basis alleges, that the  
 19 conduct of Defendant has been knowing, deliberate, willful, intended to cause  
 20 confusion, or to cause mistake or to deceive, and in disregard of Plaintiff's rights.

21       52. Plaintiff is informed and believes, and on that basis alleges, that  
 22 Defendant's wrongful conduct, as alleged above, has permitted and will permit it to  
 23 make substantial profits on the strength of Plaintiff's nationwide marketing,  
 24 advertising, sales and consumer recognition. As a direct and proximate result of  
 25 Defendant's wrongful conduct, as alleged herein, Plaintiff has been and will be  
 26 deprived of substantial sales of its products and services in an amount as yet unknown  
 27 but to be determined at trial, and has been and will be deprived of the value of the  
 28 FUELED FRESH KITCHEN mark as a commercial asset, in an amount as yet  
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1 unknown but to be determined at trial. Plaintiff seeks restitution in this matter,  
2 including an order granting Defendant's profits stemming from its infringing activity,  
3 and Plaintiff's actual and/or compensatory damages.

4       53. Plaintiff is informed and believes, and on that basis alleges, that Plaintiff  
5 has no adequate remedy at law for Defendant's continuing violation of its rights set  
6 forth above. Plaintiff seeks injunctive relief.

7        54. Plaintiff is entitled to injunctive relief under the California Business and  
8 Professions Code § 17200 et seq.

**10** **FOURTH CAUSE OF ACTION**

## *Unfair Competition – Common Law Unfair Competition*

12        55. Plaintiff incorporates the allegations in paragraphs 1 through 54 as  
13 though fully set forth herein.

14        56. Defendant's actions are an intentional business practice that is unfair,  
15 unlawful, and fraudulent and has materially diminished the value of Plaintiff's  
16 intellectual property.

17        57. Defendant's actions constitute unfair competition that knowingly and  
18 intentionally trades on and misappropriates Plaintiff's goodwill and business  
19 reputation for Defendant's enrichment.

20        58. Defendant's unfair competition has caused and will continue to cause  
21 damage to Plaintiff and it is causing irreparable harm to Plaintiff for which there is no  
22 adequate remedy at law.

23        59. Defendant has been unjustly enriched through its actions and should be  
24 disgorged of any unjust gains.

1 WHEREFORE, Plaintiff prays for judgement and injunction against  
2 Defendant as follows:

3

4 **PRAYER FOR RELIEF**

5 1. For judgment that Defendant Palomino Trade:

6 a. has violated Section 32(1)(a) of the Lanham Act, 15 U.S.C. §  
7 1114(1)(a);

8 b. has violated Section 43(a) of the Lanham Act, 15 U.S.C. §  
9 1125(a);

10 c. has engaged in unfair competition in violation of California  
11 Business and Professions Code § 17200;

12 d. has engaged in common law unfair competition; and

13 e. has engaged in common law unfair competition; and

14 f. that Defendant's activities were in all respects conducted or  
15 continued to be conducted willfully and for profit.

16 2. That an injunction be issued enjoining and restraining Defendant  
17 Palomino Trade, each of its officers, agents, servants, employees, and attorneys, and  
18 all those in active concert or participation with it from:

19 a. Using the Trademarks or any other reproduction, counterfeit, copy  
20 or colorable imitation of the trademarks on or in connection with  
21 any goods or services;

22 b. Engaging in any course of conduct likely to cause confusion,  
23 deception or mistake, or to injure Eat Strong's business reputation  
24 or dilute the distinctive quality of the Trademark;

25 c. Using any simulation, reproduction, counterfeit, copy, or  
26 colorable imitation of the Trademark in connection with the  
27 promotion, advertisement, display, sale, offer for sale,  
28

1 manufacture, production, importation, circulation, or distribution  
2 of any products;

3 d. Making any statement or representation whatsoever, or using any  
4 false designation of origin or false description, or performing any  
5 act, which can or is likely to lead the trade or public, or individual  
6 members thereof, to believe that any services rendered by  
7 Defendant are in any manner associated or connected with Eat  
8 Strong, or are sold, licensed, sponsored, approved, or authorized  
9 by Eat Strong;

10 e. Destroying, altering, removing, or otherwise dealing with the  
11 unauthorized products or any books or records which contain any  
12 information relating to the, production, distribution, circulation,  
13 sale, marketing, offer for sale, advertising, or promotion of all  
14 unauthorized services which infringe or dilute the Trademark; and

15 f. Effecting assignments or transfers, forming new entities or  
16 associations, or utilizing any other device for the purpose of  
17 circumventing or otherwise avoiding the prohibitions set forth in  
18 subparagraphs (i) through (v).

19 3. For the entry of an order directing Defendant Palomino Trade to deliver  
20 up for destruction to Eat Strong all products, advertisements, promotional materials,  
21 and signage in their possession or under their control bearing the Trademark, or any  
22 simulation, reproduction, counterfeit, copy or colorable imitation thereof, and all  
23 plates, molds, matrices, and other means of production of same pursuant to 15 U.S.C.  
24 § 1118;

25 4. For an assessment of: (a) damages suffered by Plaintiff, trebled, pursuant  
26 to 15 U.S.C. § 1117(b); or, in the alternative, (b) all illicit profits that Defendant  
27 derived while using Plaintiff's Trademark, trebled, pursuant to 15 U.S.C. § 1117(b);  
28 or, in the alternative, (c) statutory damages, awarded to Plaintiff pursuant to 15 U.S.C.  
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1 § 1117(c), of up to \$2,000,000 for each trademark that Defendant has counterfeited  
2 and/or infringed, as well as attorneys' fees and costs; and (d) an award of Plaintiff's  
3 costs and attorneys' fees to the full extent provided for by Section 35 of the Lanham  
4 Act, 15 U.S.C. § 1117; and (e) punitive damages to the full extent available under the  
5 law;

6 5. For interest as provided by law; and

7 6. For costs of suit, and for such other and further relief as the Court shall  
8 deem appropriate.

9  
10 Dated: October 4, 2023

/s/Amanda R. Washton

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21 Attorneys for Plaintiff Eat Strong, LLC

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## **JURY DEMAND**

Plaintiff requests trial by jury of all the issues in this matter.

Dated: October 4, 2023

/s/Amanda R. Washton

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